

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1073-PST-E TCEQ ID: RN105209035 CASE NO.: 34138**  
**RESPONDENT NAME: ORANGE COUNTY DEVELOPMENT CO.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 2508 MacArthur Drive, Orange, Orange County</p> <p><b>TYPE OF OPERATION:</b> Property with inactive underground storage tanks</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 5, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney:</b> Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Steven Lopez, Waste Enforcement Section, MC 128, (512) 239-1896</p> <p style="margin-left: 20px;"><b>TCEQ Regional Contact:</b> Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 899-8705</p> <p style="margin-left: 20px;"><b>Respondent:</b> Ms. Gisela Houseman, President, Orange County Development Co., 12921 Interstate Highway 10 East, Orange, Texas 77630</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Mr. Alan Sanders, Attorney at Law, Sanders &amp; Sanders, L.L.P, P.O. Box 519, Orange, Texas 77631-0519</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 19, 2007</p> <p><b>Date of NOE Relating to this Case:</b> June 15, 2007</p> <p><b>Background Facts:</b> The case was referred to the Litigation division on January 23, 2008. The EDPRP was filed on March 12, 2008. An agreed order was signed on July 7, 2008.</p> <p><b>Current Compliance Status:</b> Technical Requirements have not yet been completed.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>1. Failed to submit a construction notification form to the TCEQ 30 days prior to the tank removal or to request a 30 day construction waiver, and failed to notify the TCEQ 24 to 72 hours prior to the commencement of the tank removal [30 TEX. ADMIN. CODE § 334.6].</li> <li>2. Failed to register the USTs [30 TEX. ADMIN. CODE § 334.7].</li> <li>3. Failed to submit a site assessment and a release determination report to the agency for a leaking UST within 45 days after the removal of three USTs [30 TEX. ADMIN. CODE § 334.78].</li> <li>4. Failed to contain and immediately clean up a spill or overfill of any petroleum substance from an UST [30 TEX. ADMIN. CODE § 334.75(b)].</li> <li>5. Failed to ensure that UST removal is conducted by qualified personnel possessing the appropriate skills, experience, and competence, failed to reduce residual vapor levels in the removed USTs to non-explosive and non-ignitable levels [30 TEX. ADMIN. CODE §§ 334.55(a)(3), 334.55(b)(4)(E) and 334.55(b)(5)(C)(ii)].</li> </ol>	<p><b>Total Assessed:</b> \$6,500</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$6,500</p> <p>The Respondent has paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification</b> N/A</p> <p><b>Person Compliance History Classification</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, submit a completed UST registration form indicating that the USTs have been removed.</li> <li>2. Within 30 days, submit an Affected Property Assessment Report. If response actions are necessary, Orange County Development shall comply with all applicable requirements of the Texas Risk Reduction Program.</li> <li>3. Within 45 days, submit written certification to demonstrate compliance with the above Ordering Provisions.</li> </ol>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision June 26, 2007

<b>DATES</b>	<b>Assigned</b>	25-Jun-2007	<b>Screening</b>	5-Jul-2007	<b>EPA Due</b>	
	<b>PCW</b>	16-Jun-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Orange County Development Co.
<b>Reg. Ent. Ref. No.</b>	RN105209035
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	34138	<b>No. of Violations</b>	5
<b>Docket No.</b>	2007-1073-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Shontay Wilcher
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$6,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment for compliance history.
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<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
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<b>Before NOV</b>	<b>NOV to EDPRP/Settlement Offer</b>
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<b>Extraordinary</b>	
<b>Ordinary</b>	
<b>N/A</b>	X (mark with x)

<b>Notes</b>	The Respondent does not meet the good faith criteria.
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<b>Total EB Amounts</b>	\$95	<b>0% Enhancement*</b>	<b>Subtotal 6</b>	\$0
<b>Approx. Cost of Compliance</b>	\$12,800	<b>*Capped at the Total EB \$ Amount</b>		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$6,500
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## OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

<b>Adjustment</b>	\$0
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<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$6,500
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## STATUTORY LIMIT ADJUSTMENT

<b>Final Assessed Penalty</b>	\$6,500
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## DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

0% Reduction	<b>Adjustment</b>	\$0
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<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$6,500
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Screening Date 5-Jul-2007

Docket No. 2007-1073-PST-E

PCW

Respondent Orange County Development Co.

Policy Revision 2 (September 2002)

Case ID No. 34138

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105209035

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 5-Jul-2007		<b>Docket No.</b> 2007-1073-PST-E		<b>PCW</b>																	
<b>Respondent</b> Orange County Development Co.		<small>Policy Revision 2 (September 2002)</small>																			
<b>Case ID No.</b> 34138		<small>PCW Revision June 26, 2007</small>																			
<b>Reg. Ent. Reference No.</b> RN105209035																					
<b>Media [Statute]</b> Petroleum Storage Tank																					
<b>Enf. Coordinator</b> Shontay Wilcher																					
<b>Violation Number</b>		<div style="border: 1px solid black; width: 100px; text-align: center;">1</div>																			
<b>Rule Cite(s)</b>		<div style="border: 1px solid black; width: 100%; padding: 5px;">30 Tex. Admin. Code § 334.6</div>																			
<b>Violation Description</b>		<div style="border: 1px solid black; width: 100%; padding: 5px;">Failed to submit a construction notification form to the TCEQ 30 days prior to the tank removal or failed to request a 30 day construction waiver prior to initiating tank removal activity. Also, the respondent failed to notify the agency between 24 to 72 hours prior to the commencement of the tank removal.</div>																			
<b>Base Penalty</b>				<div style="border: 1px solid black; width: 100px; text-align: center;">\$10,000</div>																	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> </tr> <tr> <td style="text-align: center;"><b>Release</b></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> </tr> </table>					<b>Harm</b>			<b>Release</b>	Major	Moderate	Minor	Actual	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	Potential	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<b>Percent</b> <div style="border: 1px solid black; width: 100px; text-align: center;">0%</div>
		<b>Harm</b>																			
	<b>Release</b>	Major	Moderate	Minor																	
Actual	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>																		
Potential	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>																		
<b>&gt;&gt; Programmatic Matrix</b>																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Falsification</td> <td><div style="border: 1px solid black; width: 100px; height: 20px; text-align: center;">x</div></td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> <td><div style="border: 1px solid black; width: 100px; height: 20px;"></div></td> </tr> </table>					Major	Moderate	Minor	Falsification	<div style="border: 1px solid black; width: 100px; height: 20px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<b>Percent</b> <div style="border: 1px solid black; width: 100px; text-align: center;">10%</div>								
	Major	Moderate	Minor																		
Falsification	<div style="border: 1px solid black; width: 100px; height: 20px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>																		
<b>Matrix Notes</b>	<div style="border: 1px solid black; width: 100%; padding: 5px;">100% of the rule requirement was not met.</div>																				
<b>Adjustment</b>				<div style="border: 1px solid black; width: 100px; text-align: center;">\$9,000</div>																	
				<div style="border: 1px solid black; width: 100px; text-align: center;">\$1,000</div>																	
<b>Violation Events</b>																					
<b>Number of Violation Events</b>		<div style="border: 1px solid black; width: 100px; text-align: center;">1</div>	<b>Number of violation days</b>	<div style="border: 1px solid black; width: 100px; text-align: center;">30</div>																	
<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	<b>Violation Base Penalty</b> <div style="border: 1px solid black; width: 100px; text-align: center;">\$1,000</div>																		
	monthly	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>																			
	quarterly	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>																			
	semiannual	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>																			
	annual	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>																			
single event	<div style="border: 1px solid black; width: 100px; height: 20px; text-align: center;">x</div>																				
<div style="border: 1px solid black; width: 100%; padding: 5px;">One single event is recommended based on documentation of the violation during the April 19, 2007 investigation.</div>																					
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>																		
<b>Estimated EB Amount</b>		<div style="border: 1px solid black; width: 100px; text-align: center;">\$0</div>	<b>Violation Final Penalty Total</b>	<div style="border: 1px solid black; width: 100px; text-align: center;">\$1,000</div>																	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<div style="border: 1px solid black; width: 100px; text-align: center;">\$1,000</div>																	

## Economic Benefit Worksheet

**Respondent** Orange County Development Co.

**Case ID No.** 34138

**Reg. Ent. Reference No.** RN105209035

**Media** Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	20-Mar-2007	19-Apr-2007	0.1	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a construction notification or waiver form to the agency and to notify the agency of the tank removal prior to commencement within the required timeframe. The Date Required is 30 days prior to the UST removal date and the Final Date is the date of the investigation.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

Screening Date 5-Jul-2007

Docket No. 2007-1073-PST-E

PCW

Respondent Orange County Development Co.

Policy Revision 2 (September 2002)

Case ID No. 34138

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105209035

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.7

Violation Description

Failed to register the USTs in existence on or after September 1, 1987 with the Commission.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

77 Number of violation days

mark only one  
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the April 19, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

Respondent: Orange County Development Co.

Case ID No. 34138

Reg. Ent. Reference No. RN105209035

Media: Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	19-Apr-2007	19-Feb-2008	0.8	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to prepare and submit a completed UST registration form. The Date Required is the date of the investigation and the Final Date is the expected date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4



Screening Date 5-Jul-2007

Docket No. 2007-1073-PST-E

PCW

Respondent Orange County Development Co.

Policy Revision 2 (September 2002)

Case ID No. 34138

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105209035

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.78

Violation Description

Failed to submit a site assessment and a release determination report to the agency for a leaking UST within 45 days after the removal of the three USTs.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

77 Number of violation days

mark only one  
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the April 19, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

**Economic Benefit Worksheet****Respondent** Orange County Development Co.**Case ID No.** 34138**Reg. Ent. Reference No.** RN105209035**Media** Petroleum Storage Tank**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	19-Apr-2007	8-Aug-2007	0.3	\$2	n/a	\$2

**Notes for DELAYED costs**

Estimated cost to submit an assessment and release determination report. The Date Required is the date of the investigation and the Final Date is the date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$100

**TOTAL**

\$2

Screening Date 5-Jul-2007

Docket No. 2007-1073-PST-E

PCW

Respondent Orange County Development Co.

Policy Revision 2 (September 2002)

Case ID No. 34138

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105209035

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code 334.75(b)

Violation Description

Failed to contain and immediately clean up a spill or overflow of any petroleum substance from an UST. Specifically, the investigator observed hydrocarbon contamination in and around the tanks leading to the parking lot.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

77 Number of violation days

mark only one  
with an x

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the April 19, 2007 investigation date to the July 5, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$69

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

Respondent: Orange County Development Co.

Case ID No. 34138

Reg. Ent. Reference No. RN105209035

Media: Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$1,500	19-Apr-2007	19-Mar-2008	0.9	\$69	n/a	\$69
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated to clean up a spill. The Date Required is the date of the investigation and the Final Date is the expected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$69

Screening Date 5-Jul-2007

Docket No. 2007-1073-PST-E

PCW

Respondent Orange County Development Co.

Policy Revision 2 (September 2002)

Case ID No. 34138

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105209035

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.55(a)(3), 334.55(b)(4)(E), and 334.55(b)(5)(C)(ii)

Violation Description

Failed to ensure that the UST removal is conducted by qualified personnel possessing the appropriate skills, experience, and competence. Specifically, the on-site contractor utilized for the UST removal did not have a TCEQ license. Also, the respondent failed to reduce residual vapor levels in the removed USTs to non-explosive and non-ignitable levels for the entire time the USTs remained at the facility and during the entire period of transportation.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

77 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	X
	single event	

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the April 19, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

**Economic Benefit Worksheet**

Respondent Orange County Development Co.

Case ID No. 34138

Reg. Ent. Reference No. RN105209035

Media Petroleum Storage Tank

Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$11,000	19-Apr-2007	2-May-2007	0.0	\$20	n/a	\$20

Notes for DELAYED costs

Estimated cost for utilizing a licensed on-site contractor and maintain non-explosive levels for the USTs at the Facility and during transportation. The Date Required is the start date of the removal of the USTs. The Final Date is the date of residual vapors were purged from the tanks.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$11,000

TOTAL

\$20

## Compliance History

Customer/Respondent/Owner-Operator:	CN601276389	Orange County Development Co.	Classification:	Rating:
Regulated Entity:	RN105209035	QUICK WBR	Classification:	Site Rating:
ID Number(s):				
Location:	2508 MACARTHUR DR, ORANGE, TX, 77630			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	July 05, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 05, 2002 to July 05, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Shontay Wilcher		Phone:	(512) 239-2136

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 06/20/2007 (558065)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ORANGE COUNTY  
DEVELOPMENT CO.;  
RN105209035

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2007-1073-PST-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Orange County Development Co. ("Orange County Development") under the authority of TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ. The Executive Director of the TCEQ, represented by the Litigation Division, and Orange County Development represented by Mr. Alan Sanders of the law firm Sanders and Sanders, L.L.P., appear before the Commission and together stipulate that:

1. Orange County Development owns property which contained inactive underground storage tanks ("USTs") located at 2508 MacArthur Drive, Orange, Orange County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Orange County Development agree that the Commission has jurisdiction to enter this Agreed Order, and that Orange County Development is subject to the Commission's jurisdiction.
4. Orange County Development received notice of the violations alleged in Section II ("Allegations") on or about June 20, 2007.



5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Orange County Development of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of six thousand five hundred dollars (\$6,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Orange County Development has paid six thousand five hundred dollars (\$6,500.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Orange County Development have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Orange County Development has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. Orange County Development is alleged to have violated:
  - a. 30 TEX. ADMIN. CODE § 334.6 by failing to submit a construction notification form to the TCEQ 30 days prior to the tank removal or failed to request a 30 day construction waiver prior to initiating tank removal activity, as documented on April 19, 2007. Also, Respondent failed to notify the agency between 24 to 72 hours prior to the commencement of the tank removal.
  - b. 30 TEX. ADMIN. CODE § 334.7 by failing to register the USTs in existence on or after September 1, 1987 with the Commission, as documented on April 19, 2007.

- c. 30 TEX. ADMIN. CODE § 334.78 by failing to submit a site assessment and a release determination report to the agency for a leaking UST within 45 days after the removal of the three USTs, as documented on April 19, 2007.
- d. 30 TEX. ADMIN. CODE § 334.75(b) by failing to contain and immediately clean up a spill or overfill of any petroleum substance from an UST, as documented on April 19, 2007. Specifically, the investigator observed hydrocarbon contamination in and around the tanks leading to the parking lot.
- e. 30 TEX. ADMIN. CODE §§ 334.55(a)(3), 334.55(b)(4)(E), and 334.55(b)(5)(C)(ii) by failing to ensure that the UST removal is conducted by qualified personnel possessing the appropriate skills, experience, and competence, as documented on April 19, 2007. Specifically, the on-site contractor utilized for the UST removal did not have a TCEQ license. Also, Respondent failed to reduce residual vapor levels in the removed USTs to non-explosive and non-ignitable levels for the entire time the USTs remained at the facility and during the entire period of transportation.

### III. DENIALS

Orange County Development generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Orange County Development pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Orange County Development's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Orange County Development Co., Docket No. 2007-1073-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Orange County Development shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, Orange County Development shall submit a completed UST registration form indicating that the USTs have been removed, in accordance with 30 TEX. ADMIN CODE § 334.7;
- b. Within 30 days after the effective date of this Agreed Order, Orange County Development shall submit an Affected Property Assessment Report, pursuant to 30 TEX. ADMIN CODE § 350.91, to the Executive Director for approval. If response actions are necessary, Orange County Development shall comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN CODE ch. 350, which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN CODE §§ 350.92 through 350.96); financial assurance (30 TEX. ADMIN CODE § 350.33(I); and Institutional Controls under Subchapter F; and
- c. Within 45 days after the effective date of this Order, Orange County Development shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Orange County Development shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Mr. Derek Eades, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830

3. The provisions of this Agreed Order shall apply to and be binding upon Orange County Development. Orange County Development is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Orange County Development fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Orange County Development's failure to comply is not a violation of this Agreed Order. Orange County Development shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Orange County Development shall notify the Executive Director within seven days after Orange County Development becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Orange County Development shall be made in writing to the Executive Director. Extensions are not effective until Orange County Development receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Orange County Development in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Orange County Development, or three days after the date on which the Commission mails notice of the Order to Orange County Development, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

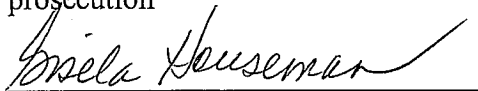
9/9/08  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or Orange County Development's failure to timely pay the penalty amount, may result in:

- A negative impact on Orange County Development's compliance history;
- Greater scrutiny of any permit applications submitted by Orange County Development;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Orange County Development;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Orange County Development; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

  
\_\_\_\_\_  
Signature

7-7-08  
\_\_\_\_\_  
Date

GISELA HOUSEMAN  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized representative of  
Orange County Development Co.

PRESIDENT  
\_\_\_\_\_  
Title